

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ALPHA PHI ALPHA FRATERNITY
INC., *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER,

Defendant.

CIVIL ACTION

FILE NO. 1:21-CV-05337-SCJ

COAKLEY PENDERGRASS, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:21-CV-05339-SCJ

ANNIE LOIS GRANT, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:22-CV-00122-SCJ

DEFENDANTS' NOTICE OF CONSTITUTIONAL QUESTION

Pursuant to Federal Rule of Civil Procedure 5.1(a) and the Court's Orders entered in these actions on October 4, 2023 (*Alpha Phi Alpha* Doc. No. [320]; *Grant* Doc. No. [281]; *Pendergrass* Doc. No. [273]), Defendants in the above-styled actions hereby file a notice of constitutional question. The

question, as stated by Defendants in the Pretrial Order filed in these cases (*Alpha Phi Alpha* Doc. No. [280], pp. 23–24; *Grant* Doc. No. [243], p. 26; *Pendergrass* Doc. No. [231], pp. 28–29) is:

1. “Defendants assert that finding for Plaintiffs requires interpreting the Voting Rights Act in a way that calls its constitutionality into question, because the Voting Rights Act’s inherently race-based remedies are not justified by present conditions and are not congruent and proportional to the exercise of congressional power under the Fourteenth and Fifteenth Amendments.”
2. “To grant the relief Plaintiffs seek, the Court must interpret the Voting Rights Act in a way that violates the U.S. Constitution.”

Defendants will serve this notice, as well as the Pretrial Order entered in these cases, on the Attorney General of the United States. *See* Fed. R. Civ. P. 5.1(a)(2).¹

¹ Defendants had not previously served a notice pursuant to Fed. R. Civ. P. 5.1(a)(2) because their claim regarding the constitutionality of the Voting Rights Act is an alternative claim and Defendants assert they should prevail on a proper interpretation of the *Gingles* preconditions and the totality of the circumstances.

This 10th day of October, 2023.

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned certifies that the foregoing Notice have been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson
Bryan P. Tyson

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2023, a true and correct copy of the foregoing was served by transmission of Notice of Electronic Filing generated by CM/ECF to all counsel of record as of issuance of filing and by certified mail and by overnight delivery to the Attorney General of the United States at the following address:

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

/s/ Bryan P. Tyson
Bryan P. Tyson